

DEPARTMENT OF STATE REVENUE

28940068.LOF

LETTER OF FINDINGS NUMBER 94-0068

Controlled Substance Excise Tax

For The Period: 12/02/93

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

II. Tax Administration - Penalty

Authority: IC 6-7-3-11.

The Taxpayer protests assessed penalty.

STATEMENT OF FACTS

The taxpayer was arrested in Bloomington, Indiana in December of 1992 and charged with possession and dealing cocaine. The Department issued a jeopardy assessment against the taxpayer based on the taxpayer's possession of 60.2 grams of cocaine. The taxpayer was assessed \$4,816.00 by the Department on December 3, 1993.

Additional facts will be provided as necessary.

I. Controlled Substance Excise Tax - Possession

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;...

During the hearing, the taxpayer stated that he plead guilty to felony cocaine dealing. Under a plea agreement entered into on July 12, 1995, the taxpayer was sentenced September 1, 1995 and received concurrent seven and one half year sentences with all but a year under house arrest suspended and probation for seven years. The taxpayer must also complete 200 hours of public restitution and pay a \$10,000 fine and a \$1,000 drug countermeasures fee. The taxpayer asserts that it is double jeopardy to have to serve time for the crime and be assessed tax on the marijuana he possessed. The Indiana Supreme Court addressed this issue in Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). The Court held that since the Department's assessment was first in time, it does not constitute the double jeopardy. In this case, the Department's assessment came before the taxpayer's plea bargain. The Department's assessment occurred in December of 1993, and the disposition of the taxpayer's criminal case was in July of 1995.

FINDING

The taxpayer's protest is denied.

II. Tax Administration - Penalty

DISCUSSION

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

FINDING

The taxpayer's protest of the Department's imposition of a one hundred percent (100%) penalty is denied.